

UNITED STATES DEPARTMENT OF AGRICULTURE  
**Post-Employment Restrictions**

The "Ethics Reform Act of 1989" revised the law governing post-employment activities of Federal employees (18 U.S.C. 207). The law, as revised applies to Federal employees who terminated their employment on or after **January 1, 1991**.

**Note:** Employees who terminated on or before December 31, 1990, are covered by the post-employment law in existence at that time, not by the revised law.

The following **summarizes** the criminal post-employment restrictions now in effect. It is a **guide** only. Additional civil post-employment restrictions under 41 U.S.C. 423(f) may be applicable to certain employees involved in Federal procurements of over \$10 million. For informal assistance in interpreting and applying the post-employment restrictions, you may contact the Department's ethics counselors, identified in Department and agency employee conduct regulations.

**I. RESTRICTION ON ALL FORMER EMPLOYEES**

**A. Permanent Restriction on Representation on Particular Matters.**

1. After you leave Federal employment, you may not knowingly communicate with, or appear before, a current employee of the United States, on behalf of any other person (except the United States), with the intent to influence the current employee's actions in a specific matter in which you participated for the Government.
2. For a violation to occur, your participation as a Federal employee must have been: personal (for example, you personally gave advice or made a recommendation or decision); substantial (for example, your advice or recommendation was considered by the agency in making a decision or taking action); and at a time when the matter involved one or more specific parties. Also, at the time of your communication with, or appearance before, a current employee, the United States must either be a party to the matter or have a direct and substantial interest in the matter.
3. Example of violation — A Federal employee considers a claim made by an outside party, then retires and represents the same claimant in a continuation of the same claim.

**B. Two-Year Restriction Concerning Particular Matters Under Official Responsibility.**

1. You cannot knowingly communicate with, or appear before, a current employee of the United States on behalf of any other person (except the United States), with the intent to influence the current employee in a particular matter involving one or more specific parties which you knew or should have known was under your official responsibility within a period of 1 year before the date of the termination of your Federal employment. For a violation to occur, the United States must be a party or have a direct and substantial interest in the particular matter.
2. Example of violation — A division director retires. Within 2 years, he or she contacts a current department employee with the intent to influence that employee's recommendation on a specific loan

application from a specific applicant. The same loan prior to the date of the division director's retirement.

## II. ONE-YEAR RESTRICTION ON AIDING OR ADVISING

- A. This restriction prohibits changing sides in trade or treaty negotiations. It applies to any former Federal employee:
1. Who personally and substantially participated in any ongoing trade or treaty negotiation on behalf of the United States within the 1-year period preceding the date on which his or her employment with the United States terminated; and
  2. Who had access to information concerning such trade or treaty negotiation which is exempt by law from disclosure and which is so designated by the department or agency.
- B. If you are such a former Federal employee, you shall not, on the basis of that information which you knew or should have known was so designated, knowingly represent aid, or advise any other person (except the United States) concerning such ongoing trade or treaty negotiations for 1 year after your employment with the United States Government terminates.
- C. Example of violation — A former Department employee participated as an employee of the Department in trade negotiations. He or she had access to information exempt by law from disclosure. Using that information, the employee advises another person as to strategy to follow in the ongoing trade negotiation.

## III. ONE-YEAR RESTRICTION ON CERTAIN SENIOR PERSONNEL

- A. You are a "Senior Employee," for purposes of this section if you:
- **Terminated service prior to November 23, 2003.**
    - All Executive Level (EL) officials.
    - Senior Executive Service employees at pay levels ES 5 and 6.
  - **Terminated service between November 23, 2003 and January 10, 2004.**
    - Any Federal employee who, as of November 23, 2004, was paid at the above levels.
  - **Terminated on or after January 11, 2004.**
    - All Executive Level (EL) officials.
    - All employees paid at a rate of basic pay that exceeds 86.5 percent of the rate of basic pay for Level II of the Executive Schedule (ES II). This effectively includes all employees who, under the former SES pay scheme, would have been paid at SES levels ES 2-6, as well as all SES employees in San Francisco.
- B. Within 1 year after service as a "Senior Employee," you may not knowingly make, with the intent to influence, any communication to or appearance before any current Department employee in connection with any matter on which you seek official action by any current Department employee.
- C. Example of violation — Within 1 year of leaving the Department, an employee who qualified as a "Senior Employee" contacts a current employee of the Department of Agriculture with the intent to influence official action by the contacted employee, or any other employee, on a matter within the Department.

**Note:** A "Senior Employee" need not have participated in the matter in any degree whatsoever, as a Department employee, nor must the matter have been under his or her official responsibility before termination of employment, to violate this provision.

#### **IV. ONE-YEAR RESTRICTION ON VERY SENIOR PERSONNEL**

- A. "Very Senior Personnel" includes only the Secretary within the Department of Agriculture.
- B. For 1 year after service as a "Very Senior Employee," the Secretary may not knowingly communicate with, or appear before, on behalf of another person, either any employee of the Department or any Executive Level employee in any agency of the Government with the intent to influence the action of the employee on any matter (see note, above).

#### **V. ONE-YEAR RESTRICTION RELATING TO FOREIGN ENTITIES**

If you are a Senior Employee or Very Senior Employee, you may not, within 1 year of leaving your position, knowingly represent the interests of the government of a foreign country or a foreign political party before any current employee of any department or agency of the of the United States with the intent to influence a decision of the employee in carrying out this or her official duties. You also may not aid or advise a foreign entity with the intent to influence a decision of any officer or employee of any department or agency of the United States in carrying out his/her official duties.

#### **VI. SPECIAL RULES FOR DETAILEES**

If you are detailed from one department or agency to another, you are an employee of both departments or agencies for purpose of the post-employment rules.

#### **VII. DEFINITIONS. FOR PURPOSES OF SECTION 207.**

- A. "Intent to influence" is the intent to affect any official action by a Government entity of the United States through any employee of the United States, including Members of Congress.
- B. "Participated" is an action taken as an employee through decision approval, disapproval, recommendation, the rendering of advice, investigation, or other such action.
- C. "Particular matter" is any investigation, application, request for ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding.

#### **VIII. EXCEPTIONS.**

Certain limited exceptions permit activities which otherwise would be restricted. If you believe an exception may apply, you should make appropriate inquires of the Department counselors or of your attorney. Briefly, the exceptions include:

- A. For all employees:
  - 1. Activities as an employee of the United States or as an elected official of State or local Government; or
  - 2. Giving testimony under oath or making statements required to be made under penalty of perjury.
- B. For Senior Employees and Very Senior Employees:
  - 1. Carrying out official duties for State and Local Governments; accredited, degree-granting institutions of higher education; or nonprofit hospitals or medical research institutions.
  - 2. Appearing or communication for international organizations of which the United States is a member.

3. Appearing or communicating on matters of a personal and individual nature (such as income taxes or pension benefits); or providing a statement which is based on the former officers' or employee's own special knowledge if no compensation is received other than witness fees provided by law.
4. Communication to furnish scientific or technological information, under procedures acceptable to the Department, in consultation with OGE.
5. Giving testimony under oath or making statements required to be made under penalty of perjury.

#### **IX. PENALTIES.**

- A. Criminal: Imprisonment for not more than 1 year, or both; or for willfully engaging in the prohibited conduct, imprisonment for not more than 5 years, or fine, or both.
- B. Civil: Up to \$50,000 for each violation, or the amount the person received for the prohibited conduct, whichever is greater.
- C. Injunctive: Prohibiting a person from engaging in conduct that violates the post-employment restrictions.